IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16654 of 2004

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANIL V SURYAVANSH & 5 - Petitioner(s)
Versus
SECRETARY MINISTRY OF FINANCE & 2 - Respondent(s)

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Appearance :
MR PH PATHAK for Petitioner(s) : 1 - 6.
RULE SERVED for Respondent(s) : 1,
MRS MAUNA M BHATT for Respondent(s) : 1 - 3.
MR MANISH R BHATT for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 04/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE MD SHAH)

Heard learned Counsel Shri Pathak for the petitioner and Ms. Bhatt for the respondents.

Original Application NO.62 of 2001, filed by Shri Hareshkumar Natvarlal Dave, was disposed of by the Central Administrative Tribunal, Ahmedabad Bench, (for short “the Tribunal”), on 12.9.2002. Union of India challenged the same by way of Special Civil Application No.8401 of 2003, which was dismissed by the Division Bench of this Court where one of us (B.J.Shethna,J.) was party to the Bench.

The present petitioners, claimed to be similarly situated, approached the learned Tribunal by way of OA No.99 of 2003, which was dismissed on 17.10.2004 by the learned Tribunal. Thereupon, Review Application No.93 of 2004 was filed in OA No.99 of 2003 by them before the Tribunal which was dismissed on a technical ground of limitation by the learned Tribunal. Hence, this petition.

Shri Pathak for the petitioners vehemently submitted that on producing the copy of the Judgment and order dated 12.9.2002, passed by the learned Tribunal in OA No. 62 of 2001 filed by Shri Hareshkumar Natvarlal Dave and others the learned Tribunal was more than convinced that the matter was squarely covered by its decision. But surprisingly, after receiving the written submission from the respondents the learned Tribunal dismissed their OA No.99 of 2003 by its impugned Judgment and order dated 7.10.2004. Therefore, they had approached the

learned Tribunal by way of Review Application i.e. Review Application No.93 of 2004. Unfortunately, the same was dismissed on the technical ground of limitation though it was filed within a period of limitation.

Shri Pathak vehemently submitted that the copy of the impugned Judgment and order dated 7.10.2004, passed by the learned Tribunal in OA No.99 of 2003 was made available only on 13.10.2004 and immediately within a period of 12 days thereafter i.e. on 25.10.2004 on behalf of the petitioners – Applicants Review Application No.93 of 2004 was filed. However, it was in defects and the said defects were removed on 25.11.2004. Unfortunately, the learned Tribunal, giving all the dates in Para : 3 of its impugned Judgment and order dated 7.12.2004, held that the defects were removed on 25.11.2004 which was much beyond the period of 30 days from the date of the Judgment. Therefore, it was time barred and as it was filed without the application for condonation of delay, therefore, it was rejected on the ground of limitation.

Ms. Bhatt for the respondents was hardly in a position to defend such order. Once the Review Application was filed within the period of limitation, may be with some defects, but merely because the defects were removed after a period of 30 days would not be a ground to come to the conclusion that it was filed after a period of limitation of 30 days. When such a glaring error is committed by the learned Tribunal while rejecting the Application

No.93 of 2004 then the same has to be quashed and set aside by this Court in exercise of its supervisory writ jurisdiction under Article 227 of the Constitution of India.

The petition is allowed only to the extent that the order dated 7.12.2005 passed by the learned Tribunal, dismissing the Review Application No.93 of 2004 on the ground of limitation, has to be quashed and set aside and accordingly it is quashed and set aside. The matter is now remanded to the learned Tribunal for deciding the Review Application No.93 of 2004 on merit, strictly in accordance with law, after restoring the same at its original number.

In view of serious allegation made in Review Application it is desirable that the learned Tribunal should decide such Review Application in open Court after extending an opportunity of hearing to both the learned Counsel.

Before parting, we must state that we have not expressed any opinion regarding the legality and validity of the impugned order dated 7.10.2004 passed by the learned Tribunal in OA No. 99 of 2003.

Accordingly, this writ petition is allowed. Rule made absolute accordingly. No order as to costs.

(B.J.SHETHNA,J.)

(M. D. SHAH, J.)

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